

**ORIGINAL**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )

Amendment Of Rules Governing Procedures )  
To Be Followed When Formal Complaints Are )  
Filed Against Common Carriers )

CC Docket No. 96-238

AT&T CORP. PETITION FOR CLARIFICATION

Pursuant to Section 1.429 of the Commission's Rules, AT&T Corp. ("AT&T") hereby petitions the Commission to clarify its Report and Order<sup>1</sup> ("Order") in this proceeding in one respect: In order to facilitate the settlement of disputes prior to the filing of formal complaints, the Order requires a complainant to "mail a certified letter outlining the allegations that form the basis of the complaint it anticipates filing with the Commission to the defendant carrier that invites response within a reasonable period of time."<sup>2</sup> The Order does not, however, indicate the representative of the defendant carrier to whom a would-be complainant must send its pre-filing letter. AT&T requests that the Commission specify that pre-filing letters must be

<sup>1</sup> See Report and Order, Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers, CC Docket No. 96-238, FCC 97-396, released November 25, 1997 ("Order").

<sup>2</sup> Id., ¶ 41; see also 47 C.F.R. § 1.721(a)(8).

delivered to both (i) the defendant carrier's designated agent in the District of Columbia,<sup>3</sup> and (ii) the defendant's representative that, to the best of the complainant's knowledge, has decision making authority over the disputed matters or has been designated as the defendant's attorney regarding those matters.

The Commission requires complainants to initiate good faith, pre-filing settlement discussions in an attempt to promote early resolution of disputes. The Commission's new complaint rules plainly contemplate that a pre-filing letter should provide a defendant with meaningful notice of the claims threatened against it -- without such notice no fruitful settlement discussions can possibly occur. Indeed, the Order shortened the time allowed for filing answers provided in the Commission's currently effective rules partly in reliance on pre-filing letters:

we view the defendants as having far more than twenty days in which to prepare their answers because the pre-filing and format and content requirements adopted in this proceeding are intended to work in conjunction with the reduction in time to file an answer.<sup>4</sup>

AT&T encourages the staff to use the considerable discretion the new rules afford them<sup>5</sup> to administer proceedings in a flexible and reasonable manner, particularly in the early phases of transition to the new complaint regime. To assure that the Commission's objectives in establishing the pre-filing letter requirement will be adequately served, AT&T requests that the

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<sup>3</sup> See 47 C.F.R. § 1.47(h).

<sup>4</sup> Order, ¶ 100; see also id., ¶ 90 ("We do not view defendants as having only twenty days in which to prepare their answers. The pleading requirements are intended to work in conjunction with the pre-filing requirements.")

<sup>5</sup> The new complaint rules permit the Bureau "considerable discretion" to adapt procedures so as to ensure "the full and fair resolution of disputes in the most expeditious manner possible." Order, ¶ 5.

Commission amend its rules to specify that the pre-filing letter required by Section 1.721(a)(8) must be sent to two persons: (i) the defendant carrier's designated agent in the District of Columbia, and (ii) the defendant's representative that, to the best of the complainant's knowledge, has decision making authority over the disputed matters or has been designated as the defendant's attorney regarding those matters. The pre-filing letter also should clearly disclose the names and addresses of all of the defendant's representatives to whom it has been sent, so that the defendant can ensure that it coordinates its response.

Requiring service on a carrier's designated agent will help ensure that a defendant has an opportunity to route a pre-filing letter the individuals in its organization that have the requisite knowledge of the disputed issues and to those with the authority to resolve them (these may, of course, not be the same person -- or even persons located in the same organization or location). In many cases the complainant already will have engaged in some discussions with particular defendant representatives, or will have engaged in a course of dealing with them that is now subject to dispute. Accordingly, in order to promote continued negotiations or to increase the possibility of meaningful negotiations that could forestall litigation, complainants also should be required to serve pre-filing letters on the defendant representative whom they reasonably believe to be responsible for the matter in question.

Moreover, because the new rules do not currently specify the representative of a defendant carrier to whom the required pre-filing letter must be sent, it is readily foreseeable that some complainants will make only a pro forma effort at compliance in order to gain an advantage by "surprising" a defendant with a complaint to which an Answer must be filed in only 20 calendar days. For example, a complainant could simply send its letter to a general "mail drop" address, thereby forcing the defendant to attempt to scramble to determine the individuals within its

organization who have knowledge of the relevant issues. AT&T's proposed clarification of the Commission's rules will deter such litigation gamesmanship.

### CONCLUSION

The simple clarification AT&T requests will significantly further the aims of the Commission's new complaint rules by both promoting meaningful pre-filing settlement negotiations and maintaining the pre-answer notice that the new rules expressly intended to provide to defendants. For the foregoing reasons, the Commission should clarify the pre-filing letter requirement of 1.721(a)(8) of its rules, as set forth above.

Respectfully submitted,

AT&T CORP.

By



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